

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Feb 24, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CHEREE C.,¹

Plaintiff,

v.

KILOLO KIJAKAZI, Acting
Commissioner of Social Security,²

Defendant.

No. 4:20-cv-5172-EFS

**ORDER DENYING PLAINTIFF'S
SUMMARY-JUDGMENT MOTION,
GRANTING DEFENDANT'S
SUMMARY-JUDGMENT MOTION,
AND AFFIRMING THE ALJ'S
DECISION**

Plaintiff Cheree C. appeals the denial of benefits by the Administrative Law Judge (ALJ). Because the consequential ALJ findings were explained, legitimate, and supported by substantial evidence, the Court denies Plaintiff's Motion for

¹ To protect the privacy of the social-security Plaintiff, the Court refers to her by first name and last initial or as "Plaintiff." See LCivR 5.2(c).

² Ms. Kijakazi is the Acting Commissioner of Social Security. She is therefore substituted for Andrew Saul as Defendant. Fed. R. Civ. P. 25(d); 42 U.S.C. § 405(g).

Summary Judgment, ECF No. 20; grants the Commissioner's Motion for Summary Judgment, ECF No. 21; and affirms the ALJ's decision.

I. Five-Step Disability Determination

A five-step sequential evaluation process is used to determine whether an adult claimant is disabled.³ Step one assesses whether the claimant is engaged in substantial gainful activity.⁴ If the claimant is engaged in substantial gainful activity, benefits are denied.⁵ If not, the disability evaluation proceeds to step two.⁶

Step two assesses whether the claimant has a medically severe impairment or combination of impairments that significantly limit the claimant's physical or mental ability to do basic work activities.⁷ If the claimant does not, benefits are denied.⁸ If the claimant does, the disability evaluation proceeds to step three.⁹

Step three compares the claimant's impairment or combination of impairments to several recognized by the Commissioner as so severe as to preclude

³ 20 C.F.R. § 416.920(a).

⁴ *Id.* § 416.920(a)(4)(i).

⁵ *Id.* § 416.920(b).

⁶ *Id.*

⁷ *Id.* § 416.920(a)(4)(ii).

⁸ *Id.* § 416.920(c).

⁹ *Id.*

1 substantial gainful activity.¹⁰ If an impairment or combination of impairments
 2 meets or equals one of the listed impairments, the claimant is conclusively
 3 presumed to be disabled.¹¹ If not, the disability evaluation proceeds to step four.

4 Step four assesses whether an impairment prevents the claimant from
 5 performing work she performed in the past by determining the claimant's residual
 6 functional capacity (RFC).¹² If the claimant can perform past work, benefits are
 7 denied. If not, the disability evaluation proceeds to step five.

8 Step five, the final step, assesses whether the claimant can perform other
 9 substantial gainful work—work that exists in significant numbers in the national
 10 economy—considering the claimant's RFC, age, education, and work experience.¹³
 11 If so, benefits are denied. If not, benefits are granted.¹⁴

12 The claimant has the initial burden of establishing she is entitled to
 13 disability benefits under steps one through four.¹⁵ At step five, the burden shifts to
 14 the Commissioner to show the claimant is not entitled to benefits.¹⁶

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 16 ¹⁰ *Id.* § 416.920(a)(4)(iii).

17 ¹¹ *Id.* § 416.920(d).

18 ¹² *Id.* § 416.920(a)(4)(iv).

19 ¹³ *Id.* § 416.920(a)(4)(v); *Kail v. Heckler*, 722 F.2d 1496, 1497–98 (9th Cir. 1984).

20 ¹⁴ 20 C.F.R. § 416.920(g).

21 ¹⁵ *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007).

22 ¹⁶ *Id.*

II. Factual and Procedural Summary

Plaintiff filed a Title 16 application.¹⁷ Her claim was denied initially and on reconsideration.¹⁸ On request, an administrative hearing was held by video before ALJ Stewart Stallings, who took testimony from Plaintiff about her conditions and symptoms.¹⁹ After the hearing, the ALJ issued a written decision denying Plaintiff's disability claim and finding:

- Step one: Plaintiff had not engaged in substantial gainful activity since April 27, 2017, the application date.
- Step two: Plaintiff had the following medically determinable severe impairments: migraines, obesity, irritable bowel syndrome, bilateral patellar tendonitis, bilateral plantar fasciitis, dysmenorrhea and menometrorrhagia post-surgery, anxiety, depression, and degenerative disc disease cervical and lumbar.
- Step three: Plaintiff did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments.
- RFC: Plaintiff had the RFC to perform sedentary work with the following limitations:

¹⁷ AR 187–202.

¹⁸ AR 126–29, 133–35.

¹⁹ AR 43–67.

lift/carry 10 pounds frequently and less than 10 pounds occasionally, sit for up to 8/8 hours and stand/walk for no more than 2/8 hours, except the claimant can occasionally balance, stoop, kneel, and crouch but never crawl or climb ramps, stairs, ladders, ropes or scaffolds; must avoid concentrated exposure to extreme cold, pulmonary irritants (such as fumes, odors, dusts, gases and poor ventilation) and hazards; needs to work in a low stress job (defined as not requiring to work around or to cope with work related circumstances that could be dangerous to the worker or others), and can perform a job that does not require sales quotas, production pace, or critical concentration (defined as careful, exact evaluation and judgment).

- Step four: Plaintiff was not capable of performing past relevant work.
- Step five: considering Plaintiff's RFC, age, education, and work history, Plaintiff could perform work that existed in significant numbers in the national economy, such as cashier II, office helper, and document preparer.²⁰

When assessing the medical-opinion evidence, the ALJ found:

- the reviewing opinion of Matthew Comrie, Psy.D., persuasive.
- the treating opinion of Shannon Phipps, D.O. and the reviewing opinions of Mathew Comrie, Psy.D., and John Robinson, Ph.D., partially persuasive.
- the treating opinions of Hazel Gavino, M.D., and Catherine Schrijver, LMFTA, not persuasive.

²⁰ AR 14–34.

1 The ALJ also found Plaintiff's medically determinable impairments could
2 reasonably be expected to cause some of the alleged symptoms, but her statements
3 concerning the intensity, persistence, and limiting effects of those symptoms were
4 not entirely consistent with the medical evidence and other evidence.²¹

5 Plaintiff requested review of the ALJ's decision by the Appeals Council,
6 which denied review.²² Plaintiff timely appealed to this Court.

7 **III. Standard of Review**

8 A district court's review of the Commissioner's final decision is limited.²³ The
9 Commissioner's decision is set aside "only if it is not supported by substantial
10 evidence or is based on legal error."²⁴ Substantial evidence is "more than a mere
11 scintilla but less than a preponderance; it is such relevant evidence as a reasonable
12 mind might accept as adequate to support a conclusion."²⁵ Moreover, because it is
13 the role of the ALJ—and not the Court—to weigh conflicting evidence, the Court
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18 ²¹ AR 23–26.

19 ²² AR 1–6.

20 ²³ 42 U.S.C. § 405(g).

21 ²⁴ *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012).

22 ²⁵ *Id.* at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997)).
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1 upholds the ALJ's findings "if they are supported by inferences reasonably drawn
2 from the record."²⁶ The Court considers the entire record.²⁷

3 Further, the Court may not reverse an ALJ decision due to a harmless
4 error.²⁸ An error is harmless "where it is inconsequential to the ultimate
5 nondisability determination."²⁹ The party appealing the ALJ's decision generally
6 bears the burden of establishing harm.³⁰

7 IV. Analysis

8 A. Symptom Reports: Plaintiff fails to establish consequential error.

9 Plaintiff argues the ALJ failed to provide clear and convincing reasons for
10 discounting her symptom reports. As the ALJ did not find Plaintiff was
11 malingering, the ALJ was required to provide "specific, clear and convincing"
12 reasons supported by substantial evidence for rejecting Plaintiff's symptom reports
13 after considering the relevant factors.³¹

15 ²⁶ *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

16 ²⁷ *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007); *Black v. Apfel*, 143
17 F.3d 383, 386 (8th Cir. 1998).

18 ²⁸ *Molina*, 674 F.3d at 1111.

19 ²⁹ *Id.* at 1115 (cleaned up).

20 ³⁰ *Shinseki v. Sanders*, 556 U.S. 396, 409–10 (2009).

21 ³¹ *See* 20 C.F.R. § 416.929(c); SSR 16-3p, 2016 WL 1119029, at *7; *Ghanim v. Colvin*,
22 763 F.3d 1154, 1163 (9th Cir. 2014) (quoting *Lingenfelter*, 504 F.3d at 1036).

1 At the hearing, Plaintiff testified that her conditions cause headaches, joint
2 and back pain, swelling in her hands and feet, irritable bowel syndrome (IBS), and
3 difficulties with concentrating, sleeping, and motivation.³² As to her headaches, she
4 testified that they cause pain, nausea, vomiting, sensitivity to light, and dizziness
5 at least two full weeks out of every month and therefore she is unable to leave her
6 house between 7–14 days each month. As to her fibromyalgia, she has pain in her
7 joints, which impacts walking and use of her hands, and swelling in her hands and
8 feet. As to her IBS, she testified it causes her pain and requires her to use the
9 bathroom for extended periods. Furthermore, she testified that her pain affects her
10 abilities to concentrate, stay on task, and sleep, causing resulting fatigue and low
11 energy. Her depression and anxiety make it difficult to leave the house and has
12 caused loss of interest in activities she otherwise enjoys.

13 The ALJ found Plaintiff's statements concerning the intensity, persistence,
14 and limiting effects of her medically determinable impairments not entirely
15 consistent with the objective medical evidence and other evidence, including her
16 noncompliance with treatment, care of a young child and other activities,
17 inconsistent statements, and conviction of disability.³³

21 ³² AR 49–60.

22 ³³ AR 23–26.

1 1. Objective Medical Evidence

2 Objective medical evidence—signs, laboratory findings, or both—is a
3 relevant factor for the ALJ to consider when assessing a claimant’s symptoms.³⁴
4 Here, the ALJ found Plaintiff’s reported symptoms inconsistent with the objective
5 medical evidence because she did not seek regular treatment for her migraines
6 from a neurologist and the physical and mental examinations were unremarkable
7 compared to her complaints.

8 The first reason—that Plaintiff did not seek regular treatment from a
9 neurologist—is supported by substantial evidence. While Plaintiff did report
10 persistent headaches from April to November 2018, she only sought treatment
11 from a neurologist once during the relevant period.³⁵ And while the record reflects
12 Plaintiff reported suffering from migraines prior to April 2018 and that from April
13 to July 2018 she was observed with mild pain or occipital tenderness, the medical
14 records are devoid of observed debilitating headache symptoms.³⁶ Furthermore,

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16 ³⁴ 20 C.F.R. § 416.902(k); 3 Soc. Sec. Law & Prac. § 36:26, Consideration of
17 objective medical evidence (2019).

18 ³⁵ See AR 321, 435–36, 670, 678, 776–77, 787, 1023, 1092.

19 ³⁶ Compare AR 359–61, 366–67, 988–89 (March–May 2017: therapist applied
20 suboccipital inhibitive distraction but did not note any pain, sensitivity, or other
21 distress caused by a headache), with AR 670–73 (Nov. 2018: complaining of regular
22 headaches but no observed sign of headache), with AR 748–54, 757–58, 776–77
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1 after November 2018, Plaintiff reported to her treating providers that the Aimovig
2 medication adequately treated her migraines.³⁷ The record also reflects that
3 Plaintiff was observed multitasking with her son during a therapy session
4 indicating, as the ALJ found, that Plaintiff's concentration was not as limited as
5 she claimed.³⁸ Substantial evidence supports the ALJ's finding that the objective
6 medical evidence was inconsistent with Plaintiff's symptom reports.

7 As to Plaintiff's reported physical symptoms, the ALJ discounted them
8 because they were out of proportion with the physical examinations, which were
9 largely unremarkable compared to her symptom reports. This finding is supported
10 by substantial evidence. The ALJ accurately highlighted that the feet, ankle, knee,
11 and hand x-rays were either negative or only showed mild conditions, that the
12 cervical MRI showed minimal and moderate conditions, and the medical records
13 routinely indicated normal muscle tone, muscle strength, and reflexes.³⁹ Although
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15 (April–July 2018) (reporting headache and being observed with mild pain and
16 tender greater occipital nerves).

17 ³⁷ See AR 359, 361, 990, 1031–32, 1061, 1092, 670, 800, 809, 812. See also AR 780–
18 82.

19 ³⁸ AR 645.

20 ³⁹ AR 518–19 (normal x-ray of right ankle); AR 502–03 (normal left foot x-ray, after
21 dropping water bottle on left foot, other than subtle swelling over the dorsal distal
22 left foot and subtle superior calcaneal spur); AR 1016–17 (normal bilateral knee x-
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1 the medical records are fairly evenly split between noting that Plaintiff's gait is
 2 antalgic or normal and Plaintiff was often observed with tenderness in her
 3 bilateral cervical or lumbar area and restricted lumbar motion, these conditions did
 4 not result in more than observed mild pain or discomfort.⁴⁰ And as the ALJ noted,

6 ray); AR 828 (normal thoracic spine x-ray); AR 1126 (normal bilateral hand x-ray);
 7 AR 1128 (normal chest/abdomen x-ray other than moderate amount of stool); AR
 8 497–98 (cervical x-ray revealing mild spinal canal stenosis and minimal bilateral
 9 neural foraminal stenosis at C4–5 and central disc herniation/protrusion causing
 10 moderate thecal sac narrowing centrally and minimal left foraminal stenosis at
 11 C5–6).

12 ⁴⁰ *Compare* records revealing antalgic gait, AR 726 (Nov. 2017), AR 730 (Dec.
 13 2017), AR 735 (Jan. 2018), AR 740 (Feb. 2018), AR 749 (April 2018), AR 754 (May
 14 2018), AR 758 (June 2018), AR 777 (July 2018); AR 785 (Aug. 2018); AR 788 (Sept.
 15 2018); AR 792 (Oct. 2018); AR 796 (Nov. 2018); AR 800 (Dec. 2018), *with* AR 605
 16 (Apr. 2017: normal gait and range of motion with tender bilateral lumbar), AR 694,
 17 702 (May–June 2017: normal gait); AR 707 (July 2017: normal gait although in
 18 mild pain); AR 712, 716, 721 (Aug.–Oct. 2017: normal gait although lumbar
 19 extension causes pain and seems to be in mild pain); AR 1016 (Oct. 2017: normal
 20 gait); AR 1046 (Jan. 2018: normal gait); AR 685 (June 2018: normal gait, muscle
 21 tone, strength, and reflexes); AR 891 (Sept. 2018: no gait limitations); AR 681 (Nov.
 22 2018: normal gait); Nov. 672–73 (Nov. 2018: normal motor exam, sensation,
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1 Plaintiff retained full lower and upper extremity strength, reflexes, and tone. The
2 ALJ rationally found Plaintiff's physical symptom reports out of proportion to her
3 observed physical limitations. Moreover, consistent with Plaintiff's lumbar and
4 cervical limitations, the ALJ's crafted RFC restricted Plaintiff to sedentary work
5 and imposed lifting and postural limitations.

6 As to Plaintiff's reported mental health symptoms of poor memory,
7 concentration, ability to process information, and low energy, the ALJ highlighted
8 that the medical record largely included normal mental status findings with
9 normal thought process, attention span/concentration, mood, and affect. This
10 finding is supported by substantial evidence, as even on the limited occasions that
11 Plaintiff was observed to be anxious and/or depressed, her thought process,
12 judgment, insight, attitude, and concentration were normal.⁴¹ Plus, as the ALJ

14 reflexes, coordination, gait, and station); AR 809, 812 (Jan.–Feb. 2019: normal gait
15 although seems to be in mild pain); AR 875 (March 2019: normal motor strength
16 and tone, no tenderness, and normal movement of all extremities).

17 ⁴¹ See AR 694, 986, 707, 712 (May–Aug. 2017: normal mood, affect, judgment,
18 thought content, behavior although at times seems to be in mild pain); AR 640–42
19 (June 2017: anxious and depressed with average eye contact, cooperative attitude,
20 full affect); AR 685 (June 2018: appropriate affect and demeanor, intact recent and
21 remote memory, and good insight and judgment); AR 890 (Sept. 2018: anxious); AR
22 673 (Nov. 2018: normal attention span, thought process, judgment, insight, mood,
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1 noted, the treatment notes indicate that Plaintiff's pain and mental health
2 impairments did not affect her ability to multi-task.⁴²

3 2. Noncompliance with Treatment

4 The ALJ discounted Plaintiff's reported symptoms because she did not
5 consistently engage in physical therapy or mental-health counseling and her use of
6 medication was inconsistent with prescribed orders. Inadequately explained
7 noncompliance with medical care can cast doubt on a claimant's subjective
8 complaints.⁴³

9 Specifically, as to Plaintiff's reported foot and knee pain, the ALJ discounted
10 these symptoms because Plaintiff did not comply with the conservative treatment
11 of performing recommended stretches, and Plaintiff did not follow through with
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13 and affect); AR 681 (Nov. 2018: normal affect and demeanor and good insight and
14 judgment). *See also* physical records related to pain symptoms: AR 999–1000 (June
15 2017: negative for confusion, decreased concentration, agitation, and anxiety
16 although there was mild diffuse tenderness to the abdomen; judgment, thought
17 content, mood, affect, and behavior normal); AR 1002–05 (Aug. 2017: negative for
18 agitation, decreased concentration, anxiety, and headaches, although positive for
19 joint swelling); AR 1015 (Oct. 2017: negative for decreased concentration and
20 anxiety).

21 ⁴² AR 645.

22 ⁴³ 20 C.F.R. 416.929(c)(3)(v); *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989).

1 physical therapy appointments for her knees.⁴⁴ That Plaintiff did not comply with
2 such treatment was a clear and convincing reason, supported by substantial
3 evidence, to discount Plaintiff's reported symptoms related to her foot and knee
4 pain.

5 As to Plaintiff's anxiety and depression, the ALJ highlighted that Plaintiff
6 attended only five counseling sessions and then failed to return despite efforts to
7 contact her. The ALJ therefore found "[i]t is possible that she did not seek further
8 mental health treatment because her symptoms were not bad."⁴⁵ First, Plaintiff
9 argues the ALJ's finding is erroneous because it is speculative and fails to account
10 for the possibility that Plaintiff's cessation of counseling was due to her anxiety
11 and depression. The ALJ's "possible" sentence must be read in its full paragraph,
12 which highlighted that Plaintiff's mental status findings were generally normal,
13 she failed to return to counseling after five sessions despite repeated efforts to
14 contact her, and treatment notes indicated good control of her dysthymia with
15 medication. The ALJ's finding that Plaintiff's reported debilitating depression and
16 anxiety were inconsistent with the prevailing objective medical records, which—as
17 discussed above—routinely noted that Plaintiff's attention and concentration were
18 normal, even on the few occasions she was noted as anxious and depressed, is
19 supported by substantial evidence.

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21 ⁴⁴ AR 1079–80.

22 ⁴⁵ AR 25.
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1 Second, Plaintiff argues the ALJ failed to consider that she ceased attending
2 counseling because of her anxiety and depression. Yet, the record reflects that not
3 only did Plaintiff appreciate that she was anxious and depressed when she declined
4 to attend mental-health treatment but also that, at the same time, she was
5 regularly attending her appointments for her physical conditions.⁴⁶ Plaintiff's
6 argument that her anxiety and depression kept her from attending mental-health
7 appointments is not supported by the record. Moreover, the record supports the
8 ALJ's decision to discount the severity of Plaintiff's reported mental-health
9 symptoms because she did not seek consistent counseling. Plaintiff started mental-
10 health counseling three times and each time only continued for a limited duration.
11 For instance, on one occasion she failed to return to counseling after she was told
12 that paperwork for benefits would not yet be completed as she was new to
13 treatment. On another occasion, she immediately ceased counseling once benefits
14 paperwork was completed.⁴⁷

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16 ⁴⁶ See, e.g., AR 932–39, 983–84.

17 ⁴⁷ See AR 633–34 (noting that mental health therapy was cancelled after Plaintiff
18 failed to reshow after only three sessions); AR 928, 950–51 (mentioning that DSHS
19 paperwork was returned unprepared because she was new to services, and she was
20 subsequently discharged from treatment because she did not attend treatment
21 after that session); AR 932, 940, 983 (discharged from treatment after entering
22 services and participating in five sessions).

1 Lastly, the ALJ found that Plaintiff did not comply with prescribed
2 medication, highlighting that on occasion Plaintiff's urine drug screen was
3 inconsistent with prescribed therapies. There are several medical records that note
4 aberrant prescription behavior because Plaintiff's urine drug screen was positive
5 for Butalbital. However, Plaintiff was prescribed a medication by her primary care
6 provider that contained Butalbital.⁴⁸ Consistent with this prescription, subsequent
7 medical records reflect "no [prior] aberrant behavior noted" and that the prior
8 urine drug screens were "consistent" with prescribed treatment.⁴⁹ As a result, the
9 ALJ's offered "aberrant behavior" reason is not supported by substantial evidence.
10 Nonetheless, the ALJ offered other clear and convincing reasons to discount
11 Plaintiff's reported symptoms and therefore this error is harmless.⁵⁰

12 3. Inconsistent Activities

13 The ALJ found the severity of Plaintiff's reported symptoms inconsistent
14 with her care of her young son, who has special needs.⁵¹ Activities of daily living
15 bear on a claimant's symptom reports if the level of activity is inconsistent with the
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18 ⁴⁸ See, e.g., AR 700, 783, 757, 752.

19 ⁴⁹ AR 795, 799, 907.

20 ⁵⁰ See *Carmickle v. Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155, 1162–63 (9th Cir.
21 2008); *Molina*, 674 F.3d at 1115.

22 ⁵¹ AR 25.

1 individual's claimed limitations.⁵² For instance, the ability to care for others
2 without help has been considered an activity that may undermine claims of
3 disabling pain.⁵³ However, if the care activities are to serve as a basis for the ALJ
4 to discredit the claimant's symptom reports, the record must identify the nature,
5 scope, and duration of the care involved, and this care must be "hands on" rather
6 than a "one-off" care activity.⁵⁴

7 Here, the record reflects that Plaintiff is the sole care provider for her young
8 son and therefore provides "hands on" care.⁵⁵ The record also reflects that, in
9 addition to the typical daily child care responsibilities, Plaintiff brought him to
10 appointments with her, interacted with him at appointments, carried him
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12 ⁵² *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998).

13 ⁵³ *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).

14 ⁵⁴ *Trevizo v. Berryhill*, 871 F.3d 664, 675–76 (9th Cir. 2017).

15 ⁵⁵ See AR 59–60 (testifying that she lives alone with her 4-year-old son); AR 285
16 (reporting that she closely monitors her use of prescribed pain medicine so that she
17 can fully care for her son safely); AR 305 (sharing that finding a babysitter for her
18 son may be difficult); AR 327 (reporting she "does care for a young son which keeps
19 her busy and active"); AR 330 ("She does stay very busy caring for her young son.");
20 AR 1018 (reporting that she carries her 26-pound son frequently throughout the
21 day); AR 1076 (advising that she changes her son's diapers and feeds him). *But see*
22 AR 379 (stating that she is "limited with activities she can do with her young son").
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1 frequently, danced with him, took him to the park, and took him to his medical
2 appointments.⁵⁶ Although as Plaintiff points out, childcare responsibilities are not
3 always easily transferrable to a work environment and “disability claimants should
4 not be penalized for attempting to lead normal lives in the face of their
5 limitations,”⁵⁷ it was not irrational on this record for the ALJ to find Plaintiff’s care
6 of her young son inconsistent with her reported debilitating physical and mental
7 symptoms. The ALJ’s finding is supported by substantial evidence and this was a
8 clear and convincing reason to discount Plaintiff’s symptoms.⁵⁸

11 ⁵⁶ AR 330 (staying very busy with her son); AR 361, 608 (taking son to medical
12 appointments in Seattle); AR 630, 645, 862 (bringing son with her to
13 appointments); AR 313, 430, 439 (dancing with son at home); AR 983 (crafting with
14 son); AR 628 (going to the park several times with her son); AR 1018 (carrying son
15 frequently).

16 ⁵⁷ *Reddick*, 157 F.3d at 722 (cleaned up).

17 ⁵⁸ The ALJ also relied on the inconsistency between Plaintiff’s reports that she has
18 difficulty walking, opening/closing her hands, and with swelling in her hands and
19 feet, and her failure to report—or be observed with—any physical joint pain,
20 abnormal range of motion, or weakness when seeking treatment for a foot sliver
21 after working in her yard. AR 1081–83. Because the Court finds the ALJ rationally
22 found that Plaintiff’s consistent daily care for her child was inconsistent with her
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1 4. Inconsistent Statements

2 The ALJ highlighted that Plaintiff's testimony about her gastrointestinal
3 symptoms and headaches were inconsistent with her reports to treating
4 providers.⁵⁹ An ALJ may discount a claimant's symptom reports on the basis of
5 inconsistent statements.⁶⁰ But the ALJ must be mindful as to whether a claimant's
6 conflicting symptom reports or exaggerated symptoms were caused by the
7 claimant's impairments.⁶¹

8 As to Plaintiff's gastrointestinal pain, constipation, and diarrhea related to
9 her IBS, she testified that she must use the restroom for long periods of time. The
10 ALJ suggests that the record showed very few complaints about treatment for IBS
11 symptoms, other than treatment notes showing her constipation was stable on
12 medication. Yet the medical record reflects that Plaintiff reported and sought
13 treatment fairly consistently for her gastrointestinal issues, which was primarily

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16 reported symptoms, the Court need not address the legitimacy of relying on this
one-time yard-work reference.

17 ⁵⁹ AR 26.

18 ⁶⁰ *See Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996) (The ALJ may consider
19 "ordinary techniques of credibility evaluation," such as reputation for lying, prior
20 inconsistent statements concerning symptoms, and other testimony that "appears
21 less than candid.").

22 ⁶¹ *See Buck v. Berryhill*, 869 F.3d 1040, 1049 (9th Cir. 2017).

1 constipation.⁶² Nonetheless, there is no mention in the medical records that
2 Plaintiff reported that her chronic gastrointestinal issues caused her to spend long
3 periods of time in the restroom or that they caused her such ongoing pain or
4 discomfort that her ability to work would be impacted. Moreover, there is
5 substantial evidence supporting the ALJ's finding that Plaintiff's reported
6 gastrointestinal symptoms were fairly stable on medication considering that any
7 observed abdominal pain was associated with only mild tenderness.⁶³

8 As to Plaintiff's headaches, Plaintiff testified that she has headaches two full
9 weeks every month, but the ALJ found the medical record was largely devoid of
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11 ⁶² AR 362–64 (reporting that her stool frequency is 2–3 times per week with
12 associated symptoms of abdominal pain, back pain, and nausea); AR 389 (reporting
13 “intermittent GI issues of constipation and diarrhea which she feels is stress-
14 related); AR 441 (mild diffuse abdominal tenderness); AR 596 (recommending a
15 diary of her bowel symptoms); AR 890, 1117 (soft, non-tender abdomen with
16 normal bowel sounds); AR 985 (reporting medication for constipation caused severe
17 diarrhea and so only took it once, with mild diffuse abdominal tenderness), AR
18 1045, 1089 (soft, non-tender, non-distended); AR 1061 (reporting one stool per week
19 and seeking to get her back on the medication that has helped her the most with
20 constipation); AR 1128 (x-ray revealing moderate amount of stool in colon).

21 ⁶³ *Compare* AR 996, 1000, 1099 (mild abdominal tenderness) *with* AR 1062 (no
22 abdominal tenderness).
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1 headache complaints or treatment. Although there is evidence that Plaintiff did
2 complain of headaches and seek treatment for such, substantial evidence supports
3 the ALJ's finding that Plaintiff's testimony that she has headaches for two weeks
4 each month is inconsistent with her reports to her treatment providers over the
5 course of the relevant disability period. For instance, while Plaintiff reported
6 increased migraines from April to November 2018, the record reflects minimal
7 migraine reports prior thereto and by December 2018 Plaintiff reported that her
8 migraines benefitted from Aimovig and her medication regiment was providing
9 adequate relief.⁶⁴ And as noted above, even when Plaintiff was observed with
10 occipital tenderness or pain, it was mild.

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12 ⁶⁴ See, e.g., AR 990 (May 2017: reporting a migraine four days after last physical
13 therapy session); AR 1031 (Jan. 2018: assessing whether poor sleep may be
14 contributing to migraines); AR 1061 (Feb. 2018: noting that migraines are stable
15 and that if she feels better in general her migraines may be minimized without
16 additional medication); AR 1092 (May 2018: reporting more frequent migraines
17 and desiring to see a different neurologist); AR 776–77 (July 2018: reporting
18 headaches every day accompanied with nausea and light sensitivity; Floricet was
19 discontinued as it was causing Plaintiff's rebound headache; given information
20 about Aimovig); AR 780–783 (Aug. 2018: bilateral greater occipital nerve block
21 performed and waiting for Aimovig from pharmacy); AR 787 (Sept. 2019: Aimovig
22 is helping slightly and discussed potential for Botox to treat migraines if needed);
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1 Accordingly, the ALJ's decision to discount Plaintiff's reported symptoms
2 about her IBS and headaches is supported by substantial evidence. This was a
3 clear and convincing reason to discount these reported symptoms.

4 5. Improper Disability Motivation

5 The ALJ also found "there appears to be a conviction of disability. . . , which
6 can affect one's motivation to improve."⁶⁵ An ALJ may consider whether the
7 claimant has not worked for reasons unrelated to the alleged disability and
8 whether there is a tendency to exaggerate or engage in conduct to manipulate the
9 disability-determination process.⁶⁶

10 Here, the ALJ highlighted a hospital record wherein Plaintiff became
11 agitated when the care provider informed her that her reported tender neck,
12 anxiety, lightheadedness, headaches, pain, and numbness in her bilateral hands
13 and feet would not require diagnostic testing because they were ongoing and
14 benign, and then after demanding such testing, Plaintiff left the hospital before the
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16 AR 670 (Nov. 2018: reporting chronic daily headache in late afternoon or evening);
17 AR 678 (Nov. 2018: reporting daily headaches); AR 800 (Dec. 2018: reporting that
18 migraines benefit from Aimovig, which provides adequate relief); AR 809 (Jan.
19 2019: same); AR 812 (Feb. 2019: same).

20 ⁶⁵ AR 26.

21 ⁶⁶ 20 C.F.R. § 416.929 (work record can be considered in assessing reported
22 symptoms). *See Smolen*, 80 F.3d at 1284.
23

1 requested testing was completed.⁶⁷ The ALJ also highlighted that, even before the
2 alleged onset date, Plaintiff's earning records indicate minimal income, thereby
3 suggesting that factors other than her alleged impairments are the cause of her not
4 working fulltime.⁶⁸

5 To counter the ALJ's conviction-of-disability finding, Plaintiff argues that
6 her statement to a provider that she hoped to return to some type of employment
7 undermines the ALJ's finding. Plaintiff made this hopeful-return-to-work
8 statement during a 2015 treatment session wherein she asked the provider to
9 complete paperwork to support her prior disability application.⁶⁹ In this setting,
10 this "future employment" statement is not inconsistent with the ALJ's conviction-
11 of-disability finding. Moreover, even without considering the years that Plaintiff
12 was in college, the time period involved in the prior alleged disability period, and
13 the time period immediately following her son's birth, the ALJ rationally found
14 that Plaintiff's work history is sparse. This sparse work history, along with the
15 noted exchange during the September 2018 emergency room visit and the
16 remainder of the record, provides substantial evidence to support the ALJ's finding
17 that Plaintiff's motivation to work is impacted by her conviction of disability. This
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20 ⁶⁷ AR 890–91.

21 ⁶⁸ AR 207.

22 ⁶⁹ AR 285.

1 was a clear and convincing reason to discount Plaintiff's reported disabling
2 symptoms.

3 **B. Medical Opinions: Plaintiff fails to establish consequential error.**

4 Plaintiff argues the ALJ improperly rejected the opinions of Dr. Gavino,
5 Ms. Schrijver, and Dr. Phipps.

6 1. Standard

7 The parties disagree over whether Ninth Circuit "clear and convincing" and
8 "specific and legitimate" case law standards for weighing medical opinions continue
9 to apply considering the amended agency regulations pertaining to medical
10 opinions.⁷⁰ The Court is to defer to new agency regulations unless the prior judicial
11 "construction follows from the unambiguous terms of the statute and thus leaves
12 no room for agency discretion."⁷¹ Because the Social Security Administration
13 remains the interpreter (within the limits of reason) of Title 16 and there is no
14 binding precedent finding that the prior judicial construction followed from the
15 unambiguous terms of Title 16, the Court's analysis is governed by the new
16 regulations, as well as the Administrative Procedure Act's (APA) requirement that
17 agency decisions include a statement of "findings and conclusions, and the reasons
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19 ⁷⁰ See *Revisions to Rules Regarding the Evaluation of Medical Evidence*, 2017 WL
20 168819, 82 Fed. Reg. 5844-01 (Jan. 18, 2017); 20 C.F.R. § 416.920c.

21 ⁷¹ *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981–82
22 (2005); see *Schisler v. Sullivan*, 3 F.3d 563, 567–58 (2d Cir. 1993).

1 or basis therefore, on all the material issues of fact, law, or discretion presented on
 2 the record.”⁷²

3 Therefore, as required by the new regulations and APA, the ALJ was
 4 required to explain his reasoning with specific reference as to how he considered
 5 the supportability and consistency factors when considering the medical opinions,
 6 and his analysis must be supported by substantial evidence and free from legal
 7 error.⁷³

8 2. Dr. Gavino

9 Dr. Gavino treated Plaintiff in October 2018 and May 2019, completing
 10 forms regarding Plaintiff’s physical limitations, wherein she diagnosed Plaintiff
 11 with breast cancer in remission, exercise-induced asthma, fibromyalgia, IBS,
 12 depression, dysmenorrhea, endometriosis, migraine headaches, allergic rhinitis,
 13 chronic pain, left wrist carpal tunnel, and bulging neck pain.⁷⁴

14 In October 2018, Dr. Gavino opined that Plaintiff could work only 1–10
 15 hours a week, is unable to lift heavy objects, is unable to sit/stand for prolonged
 16

17 ⁷² 5 U.S.C. 557(c)(A).

18 ⁷³ *Id.* §§ 416.920c(c)(1)–(5), 416.920c(b)(2); *Ford v. Saul*, 950 F.3d 1141, 1153–54
 19 (9th Cir. 2020); Nevertheless, it is not clear that the Court’s analysis in this matter
 20 would differ in any significant respect under the standards set forth in *Lester v.*
 21 *Chater*, 81 F.3d 821, 830–31 (9th Cir. 1995).

22 ⁷⁴ AR 970–72, 979–82.
 23

1 periods of time, is unable to bend over/reach above, is unable to concentrate for
2 extended periods of time, is unable to make repetitive motions with her upper
3 extremity, is unable to tolerate exposure to chemicals or synthetic materials, is
4 limited to sedentary work defined as lifting 10 pounds maximum and frequently
5 lifting or carrying small articles and sitting, walking, or standing for brief periods,
6 and that she has problems making and keeping appointments and using
7 transportation.⁷⁵

8 In May 2019, Dr. Gavino opined that Plaintiff needs to lie down at least one
9 hour a day because of her back pain and fibromyalgia; her medications can cause
10 fatigue, dizziness, drowsiness, and mood instability; work on a regular and
11 continuous basis would cause her condition to deteriorate; she can perform postural
12 activities only occasionally; she can use her right and left upper extremities only
13 occasionally; during an 8-hour workday she needs to rotate positions about every
14 15 to 20 minutes, stand/walk less than 2 hours, and sit 2 hours; she is limited to
15 lifting and carrying 10 pounds occasionally and less than 10 pounds frequently; she
16 will be off task more than 50 percent of the day (per Plaintiff's report); she will
17 miss more than 4 days of work per month; and she is unable to concentrate for
18 extended periods of time.⁷⁶

21 ⁷⁵ AR 970–72.

22 ⁷⁶ AR 970–71, 979–82.

1 The ALJ found Dr. Gavino's 2018 opinion partially persuasive and 2019
2 opinion not persuasive.⁷⁷ Plaintiff argues the ALJ erred for several reasons. The
3 ALJ's reasons are addressed.

4 First, as to Dr. Gavino's opinions that Plaintiff is limited to sedentary work
5 and is capable of working only 1–10 hours a week, the ALJ discounted them
6 because the medical record contained only mild to moderate objective physical
7 findings and the opinions are inconsistent with Plaintiff's ability to be the primary
8 care provider for a young child. Whether the opinion is consistent with the evidence
9 from other medical sources and nonmedical sources is a critical factor.⁷⁸ Here, the
10 ALJ's finding that the mild to moderate objective findings are inconsistent with
11 Dr. Gavino's opined sedentary-work and work-hour limitations is supported by
12 substantial evidence. The hand, feet, knee, thoracic spine, and abdomen x-rays
13 were either normal or revealed only mild conditions.⁷⁹ Although the x-ray of the
14 cervical spine revealed mild to moderate conditions, and she was often observed

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16 ⁷⁷ AR 27.

17 ⁷⁸ 20 C.F.R. § 416.920c(b)(2), (c)(2).

18 ⁷⁹ AR 518–19 (normal x-ray of right ankle); AR 502–03 (normal left foot x-ray other
19 than subtle swelling over the dorsal distal left foot and subtle superior calcaneal
20 spur); AR 1016–17 (normal bilateral knee x-ray); AR 828 (normal thoracic spine x-
21 ray); AR 1126 (normal bilateral hand x-ray); AR 1128 (normal chest/abdomen x-ray
22 other than moderate amount of stool).

1 with an antalgic gait and tenderness in her spine, she was also just as often
2 observed with a normal gait and no tenderness, and the medical records
3 consistently show normal muscle strength and tone.⁸⁰ In addition, the record
4 reflects that Plaintiff was the sole care provider for her young son, providing daily
5 “hands on” care, including frequently carrying him, changing diapers, feeding him,
6 and arranging and driving him to his medical appointments. Substantial evidence
7 supports the ALJ’s finding that Plaintiff’s care for her young son is inconsistent
8 with Dr. Gavino’s opined severe physical and mental limitations. Even though, in
9 contrast to work demands, a parent caring for a young child at home generally can
10 take breaks or rest at non-typical work break periods,⁸¹ there is substantial
11 evidence in the record supporting the ALJ’s finding that Plaintiff’s care for her
12 young son was inconsistent with Dr. Gavino’s severe limitations. These are
13 legitimate reasons supported by substantial evidence to find Dr. Gavino’s opinions
14 inconsistent with the record.

15 Second, the ALJ discounted Dr. Gavino’s 2018 opinion because treatment
16 notes did not reflect that Plaintiff consistently complained of headaches, hand pain,

18 ⁸⁰ AR 497–98 (cervical x-ray revealing mild spinal canal stenosis and minimal
19 bilateral neural foraminal stenosis at C4–5 and central disc herniation/protrusion
20 causing moderate thecal sac narrowing centrally and minimal left foraminal
21 stenosis at C5–6).

22 ⁸¹ *Fair*, 885 F.2d at 603.

1 IBS, plantar fasciitis, menorrhagia, or dysmenorrhea. Whether a medical opinion is
2 consistent with the longitudinal record—including Plaintiff’s reported symptoms or
3 the medical findings and observations—is a factor for the ALJ to consider.⁸²

4 Plaintiff accurately points out that she endorsed symptoms of at least one of these
5 impairments during nearly every “review of systems” documented in the record.
6 However, even though Plaintiff endorsed these symptoms, the ALJ’s finding that
7 the largely normal to mild objective findings in the medical record do not support
8 the endorsed symptoms is supported by substantial evidence. For instance, the
9 medical record reflects that Plaintiff’s headaches were not observed to be severe, as
10 she was only seen with mild pain, tenderness, or discomfort.⁸³ Moreover, the record
11 reflects that her headaches were ultimately adequately treated with medication.

12 As to hand pain, the hand x-rays were normal, there was no noted weakness
13 in her hand strength, reduced range of motion, or reduced reflexes. As to Plaintiff’s
14 IBS, although Plaintiff fairly consistently sought treatment for IBS, the ALJ

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16 ⁸² 20 C.F.R. § 416.920c(b)(2).

17 ⁸³ See AR 990, 1031, 1061, 1092, 670, 800, 809, 812. See also AR 359–61, 366–67,
18 988–89 (noting the therapist applied suboccipital inhibitive distraction but did not
19 note any pain, sensitivity, or other distress caused by a headache); AR 670–73
20 (complaining of regular headaches but no observed sign of headache); AR 748–54,
21 757–58, 776–77 (April–July 2018) (reporting headache and being observed with
22 mild pain and tender greater occipital nerves).
23

rationally found the reported and observed gastrointestinal symptoms were not consistent with the need to perform sedentary work or work only 1–10 hours of the week.⁸⁴ As to Plaintiff's plantar fasciitis, when she sought treatment in May 2017 and February 2018 for foot pain, the physical exams were normal except for mild infracalcaneal tenderness to the bilateral heel, and the provider recommended conservative treatment, including orthotics and stretches.⁸⁵ The ALJ's finding that Dr. Gavino's severe opinions were inconsistent with the medical record related to Plaintiff's hands, IBS, and feet is supported by substantial evidence.

As to Plaintiff's menorrhagia and dysmenorrhea, she regularly reported painful periods. However, as the ALJ highlighted, Plaintiff had a hysteroscopy, dilation, and curettage in January 2018.⁸⁶ The findings were benign and revealed only an enlarged uterus. By May 2018, these conditions were stable. Substantial evidence supports the ALJ's finding that the medical records did not indicate that Plaintiff suffered pain resulting from her menorrhagia and dysmenorrhea to an extent consistent with Dr. Gavino's severe limitations.⁸⁷

⁸⁴ See, e.g., AR 362–64, 389, 441, 596, 890, 1117, 985, 1045, 1089, 1061, 1128.

⁸⁵ AR 992–93, 1063–64.

⁸⁶ AR 735–42.

⁸⁷ See AR 748–54, 757–58, 776–77 (April–July 2018) (reporting headache and being observed with mild pain and tender greater occipital nerves); AR 694, 702, 707,

1 Third, the ALJ discounted Dr. Gavino's opinions because her neck and back
2 pain were controlled with treatment. As discussed previously, Plaintiff was often
3 observed to be in mild pain with tenderness to her occipital nerve, lumbar
4 musculature, or abdomen, and with an antalgic gait; however, she was more often
5 observed with a normal gait and routinely had normal upper and lower body
6 strength and muscle tone. On this conflicting record, the ALJ's finding that
7 Dr. Gavino's severe opinion is inconsistent with the observed minor neck and back
8 pain is supported by substantial evidence.

9 Fourth, the ALJ found Dr. Gavino's 2019 opinion not persuasive because
10 there was no basis for the opinion that Plaintiff would miss four days or more of
11 work per week, particularly as the objective evidence indicated no significant
12 problems with attention span, concentration, and persistence and the opinion may
13 have been based solely on Plaintiff's self-report. Regardless of whether Dr. Gavino's
14 absenteeism opinion was based on more than Plaintiff's self-reports, the ALJ
15 reasonably determined that the objective evidence did not indicate such severe
16 problems with attention span, concentration, and persistence.⁸⁸

17 And contrary to Plaintiff's argument that she is likely to be absent from
18 work because of the pain caused by her impairments and the medication side
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20 800, 809, 812, 712, 716 (May–Sept. 2017, Dec. 2018–Feb. 2019) (observed to be in
21 mild pain).

22 ⁸⁸ AR 640–42, 673, 681, 685, 694, 707, 712, 890, 986.
23

1 effects of fatigue, dizziness, and mood instability, the medical record does not
2 support such disabling pain or medication side-effects. As mentioned above, the
3 observed mild pain and lumbar tenderness do not support Dr. Gavino's
4 absenteeism opinion. Moreover, Dr. Gavino's statement that some of Plaintiff's
5 medications can cause fatigue, dizziness, drowsiness, and mood is inconsistent with
6 Plaintiff's reports to treatment providers, as highlighted by the ALJ, wherein
7 Plaintiff routinely reported either no medication side-effects or that side-effects
8 were limited to constipation, nausea, and vomiting, and these were not reported to
9 an extent consistent with the need to miss four or more days of work.⁸⁹

10 Finally, the ALJ found Dr. Gavino's manipulation opinions inconsistent with
11 the lack of a diagnosed upper extremity impairment. Plaintiff argues that the ALJ
12 failed to appreciate the limitations resulting from her diagnosed fibromyalgia, an
13 error resulting from the ALJ's failure to find fibromyalgia to be a medically
14 determinable impairment at step two. Plaintiff relies on the medical records
15 authored by Dr. James Byrd, who first evaluated Plaintiff for fibromyalgia in July
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18 ⁸⁹ See AR 700, 702, 716, 811, 874 (reporting no medication side-effects); AR 710,
19 715, 733, 799, 807 (reporting constipation as only medication side-effect); AR 738,
20 752, 757, 776, 783, 787, 791 (reporting nausea and constipation as medication side-
21 effects); AR 803 (reporting nausea, vomiting, constipation as medication side-
22 effects).
23

1 2018.⁹⁰ At this appointment, Dr. Byrd noted that Plaintiff had greater than 11
2 tender points but no other evidence of active synovitis and that “[h]er presentation
3 is quite classic for fibromyalgia, but that is a diagnosis of exclusion.”⁹¹ Dr. Byrd
4 saw Plaintiff again in September 2018. Again, she was noted to have greater than
5 11 tender points with no overt evidence of active synovitis.⁹² Dr. Byrd found “[h]er
6 presentation remains consistent with fibromyalgia. Laboratory testing is certainly
7 reassuring and I am glad she is on vitamin D supplementation at this point.”⁹³
8 Dr. Byrd last saw Plaintiff in January 2019, at which point he made the same
9 observations, and again found her presentation consistent with fibromyalgia.⁹⁴

10 As the ALJ stated, Social Security Ruling 12-2p requires that fibromyalgia
11 be diagnosed by a licensed physician who explains how the patient meets a list of
12 criteria, which includes at least 11 tender points on physical examination that
13 must be found bilaterally (on the left and right sides of the body) and both above
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18 ⁹⁰ AR 761–62.

19 ⁹¹ AR 762.

20 ⁹² AR 763–65.

21 ⁹³ AR 765.

22 ⁹⁴ AR 765–67.

1 and below the waist.⁹⁵ The ALJ must also consider whether other disorders could
2 cause the symptoms or signs.⁹⁶ Here, the ALJ's finding that the medical evidence
3 did not establish the required criteria is supported by substantial evidence because
4 Dr. Byrd did not identify the location of the greater than 11 tender points.
5 Critically, the ALJ also highlighted that Plaintiff was being treated for chronic
6 pain by a pain clinic, which was addressing her pain complaints that were
7 supported by objective evidence. And as is discussed above, the ALJ rationally
8 weighed the conflicting record and found that the medical observations and
9 findings were inconsistent with Plaintiff's extreme symptom reports of fatigue,
10 pain, and problems concentrating. Plaintiff has not established that the ALJ failed
11 to consider either fibromyalgia at step two or Plaintiff's supported pain and other
12 symptoms during the other sequential steps, including when assessing that Dr.
13 Gavino's manipulation opinions were inconsistent with the objective medical
14 findings.

15 Plaintiff fails to establish error as to the ALJ's consideration of Dr. Gavino's
16 manipulation and other opinions.

19 ⁹⁵ See also *Ford*, 950 F.3d at 1155 n.7 ("Under the social security rules, a physician
20 may diagnose fibromyalgia if the patient meets the 1990 or 2010 criteria
21 established by the American College of Rheumatology (ACR).")

22 ⁹⁶ SSR 12-2p.

1 3. Ms. Schrijver

2 From September to November 2018, Ms. Schrijver counseled Plaintiff, seeing
3 her a total of five times.⁹⁷ In November 2018, Ms. Schrijver completed a disability
4 form identifying Plaintiff's diagnosis as posttraumatic stress disorder, stating that
5 Plaintiff "reports experiencing issues with depression, sleep disturbance, social
6 isolation, excessive worrying, avoidance to traumatic events, flashbacks, easily
7 irritable, difficulty recalling aspects of events, [and] hypervigilance;" finding her
8 condition was not permanent and was likely to last 6 months with cognitive
9 behavioral therapy; opining that Plaintiff was limited to working 1–10 hours a
10 week with supportive accommodations for anxiety; and stating that she was unable
11 to assess whether Plaintiff had any lifting or carrying restrictions or whether her
12 conditions impacted her ability to access services and keep appointments.⁹⁸

13 The ALJ found Ms. Schrijver's 10-hour-work restriction not persuasive
14 because Plaintiff sought minimal mental-health treatment, the medical record
15 indicated improvement, and the mental-status examinations of record were
16 repeatedly within normal limits.⁹⁹

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20 ⁹⁷ AR 940–41, 983.

21 ⁹⁸ AR 975–77.

22 ⁹⁹ AR 27.

1 As indicated above, the ALJ is to consider whether a medical opinion is
2 consistent with the record.¹⁰⁰ Here, substantial evidence supports the ALJ's finding
3 that Ms. Schrijver's opinion is inconsistent with the record. As previously
4 discussed, Plaintiff started and stopped counseling on three occasions during the
5 relevant period.¹⁰¹ She began therapy in June 2017 and attended four sessions
6 through July 2017¹⁰²; she began again in March 2018 and attended two sessions¹⁰³;
7 and then she began again in September 2018 and attended five sessions before she
8 discontinued therapy in November 2018.¹⁰⁴ Plaintiff argues that the ALJ failed to
9 consider that it was her mental-health symptoms that prevented her from
10 attending counseling. However, the record reflects that Plaintiff consistently
11 attended her physical appointments and took her son to his medical appointments.
12 Plaintiff fails to explain why her depression and anxiety contributed to her ceasing
13 mental-health therapy on three occasions after only obtaining minimal treatment.
14 The ALJ's finding that Ms. Schrijver's opinion is inconsistent with the minimal
15 mental-health treatment that Plaintiff sought is supported by substantial evidence.

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18 ¹⁰⁰ 20 C.F.R. § 416.920c(b)(2).

19 ¹⁰¹ AR 633–34, AR 928, 950–51, 932, 940, 983.

20 ¹⁰² AR 633–48.

21 ¹⁰³ AR 918–31, 950–51.

22 ¹⁰⁴ AR 932–41, 983–84.

1 Moreover, substantial evidence supports the ALJ's finding that Plaintiff's
2 mental-status findings were generally normal or indicated improvement and were
3 therefore inconsistent with Ms. Schrijver's opinion that Plaintiff was unable to
4 work more than ten hours a week.¹⁰⁵

5 4. Dr. Phipps

6 Dr. Phipps treated Plaintiff and offered two opinions in October 2017. On the
7 first form, Dr. Phipps opined that Plaintiff could occasionally lift 20 pounds and
8 frequently carry 25 pounds, was not limited with sitting, standing, or walking, did
9 not need to alternate positions to relieve discomfort, did not have manipulative
10 limitations with her upper extremities, would be off task periodically depending on
11 the work, would not need to lie down at work, should never climb stairs, could only
12 occasionally perform other postural activities, and would be absent four or more
13 days per month due to seeing a pain doctor monthly, a counselor every two weeks,

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15 ¹⁰⁵ See AR 694, 986, 707, 712 (May–Aug. 2017: normal mood, affect, judgment,
16 thought content, behavior although at times seems to be in mild pain); AR 640–42
17 (June 2017: anxious and depressed with average eye contact, cooperative attitude,
18 full affect); AR 685 (June 2018: appropriate affect and demeanor, recent and
19 remote memory intact, and good insight and judgment); AR 890 (Sept. 2018:
20 anxious); AR 673 (Nov. 2018: normal attention span, thought process, judgment,
21 insight, mood, and affect); AR 681 (Nov. 2018: normal affect and demeanor and
22 good insight and judgment).

1 an ob-gyn every six weeks, a psychiatrist every six weeks, and physical therapy.¹⁰⁶

2 On the second form, Dr. Phipps opined that Plaintiff was limited to light work,
3 which was defined as lifting up to 20 pounds and frequently lifting or carrying up
4 to 10 pounds, walking or standing up to 6 hours each day, and sitting most of the
5 time with occasional pushing and pulling of arm or leg controls; working 11–20
6 hours per week; and her conditions vary day by day due to flares, which could impair
7 her concentration, energy, and stamina, and create a need for periodic absences.¹⁰⁷

8 The ALJ found Dr. Phipps' light-work opinion partially persuasive because,
9 while Plaintiff did have physical restrictions consistent with a sedentary RFC with
10 postural and lifting limitations, the medical evidence did not show that her
11 restrictions were as severe as opined by Dr. Phipps. And the ALJ found Dr. Phipps'
12 opinion that Plaintiff would miss four or more days of work per month not
13 persuasive, as it was not supported by meaningful explanation.¹⁰⁸

14 Plaintiff argues the ALJ erred because Dr. Phipps did provide a basis for her
15 absenteeism opinion, i.e., the symptoms caused by her fibromyalgia, migraines,
16 cervical disc herniation, low back pain, and dysthymic disorder caused her to miss
17 work. However, as previously discussed, the ALJ's finding that Plaintiff's physical
18 and mental symptoms were predominately mild and did not support an opined
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20 ¹⁰⁶ AR 618–21.

21 ¹⁰⁷ AR 966–68.

22 ¹⁰⁸ AR 26–27.

1 limitation of missing four or more days of work per month is supported by
2 substantial evidence.

3 Plaintiff accurately highlights that the ALJ did not address Dr. Phipps'
4 opinion that Plaintiff could only work 11–20 hours a week. Yet, when assessing Dr.
5 Gavino's opinions, the ALJ found that the mild to moderate objective medical
6 findings and Plaintiff's ability to be the primary care provider for her young son
7 indicate that she is capable of fulltime work. Therefore, any error in the ALJ's
8 failure to discuss Dr. Phipps' work-hour limitation is harmless because the ALJ
9 discussed in another part of his decision why such an opinion was inconsistent with
10 the objective medical findings and Plaintiff's caretaking of her young son.¹⁰⁹

11 **C. Step Five and RFC: Plaintiff fails to establish error.**

12 Plaintiff argues the ALJ failed to properly include all of her limitations into
13 the RFC and the hypothetical presented to the vocational expert. However, this
14 argument depends on her contentions that the ALJ erred in evaluating her
15 symptom reports and the medical opinions described above. Because there was no
16 error, this final argument necessarily fails.¹¹⁰

19 ¹⁰⁹ See *Carmickle*, 533 F.3d at 1162 (requiring the error to be consequential to the
20 disability analysis).

21 ¹¹⁰ See *Magallanes v. Bowen*, 881 F.2d 747, 756-57 (9th Cir. 1989) (allowing ALJ to
22 restrict hypothetical to those limitations supported by substantial evidence).
23

V. Conclusion

Accordingly, **IT IS HEREBY ORDERED:**

1. Plaintiff's Motion for Summary Judgment, **ECF No. 20**, is **DENIED**.
2. The Commissioner's Motion for Summary Judgment, **ECF No. 21**, is **GRANTED**.
3. The Clerk's Office shall enter **JUDGMENT** in favor of the Commissioner.
4. The case shall be **CLOSED**.

IT IS SO ORDERED. The Clerk's Office is directed to file this Order and provide copies to all counsel.

DATED this 24th day of February 2022.



EDWARD F. SHEA
Senior United States District Judge